

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 58 of 2000****For Approval and Signature:****HONOURABLE MR.JUSTICE R.P.DHOLAKIA :****HONOURABLE MR.JUSTICE KS JHAVERI :**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRAVIN KACHARABHAI - Appellant(s)**Versus****STATE OF GUJARAT & 1 - Opponent(s)**

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Appearance :THROUGH JAIL for Appellant(s) : 1, MR JM BUDDHBHATTI for Appellant(s) : 1,
MS MITA S PANCHAL APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA**and****HONOURABLE MR.JUSTICE KS JHAVERI****Date : 18/12/2007****ORAL JUDGMENT**

(Per : HONOURABLE MR.JUSTICE KS JHAVERI)

1.0 This appeal is directed against the judgment and order dated 18.12.1999 passed by the learned Addl. Sessions Judge, Himmatnagar, Camp at Modasa in Sessions Case No. 54 of 1999 whereby, the appellant – accused was convicted for the offences punishable u/s. 363, 376 and 302 of the Indian Penal Code [for short, “the I.P.C.”].

1.1 For conviction u/s. 363, the appellant was sentenced to undergo Rigorous Imprisonment for a period of Three Years with fine of Rs.500/- and in default of payment of fine, Rigorous Imprisonment for a further period of Six Months. For conviction u/s. 376, the appellant was sentenced to undergo Rigorous Imprisonment for a period of Ten Years with fine of Rs.500/- and in default of payment of fine, Rigorous Imprisonment for a further period of Six Months, while for conviction u/s. 302, the appellant was sentenced to undergo imprisonment for Life with fine of Rs.500/- and in default of payment of fine, Rigorous Imprisonment for a further period of Six Months. All the

sentences were ordered to run concurrently.

2.0 The facts in brief, as brought out by the prosecution, are as under;

2.1 The complainant herein is the grand-mother of deceased – Nilamben. At the time when the alleged incident in question took place, deceased – Nilamben was aged about 8½ years and was residing along with her mother – Hansaben at the house of her grand-mother – Gitaben situated at Village Jitpur of Bayad Taluka.

2.2 On 02.03.1999, at around 1200 hrs., the deceased had gone to a field situated in the outskirts of the Village for the purpose of attending the natural call. As the deceased had not returned home by the usual time, her grand-mother, the complainant herein, went towards the field. While she reached the field, where the crop of Fennel was standing, she noticed that the appellant was rushing out of the said field during which time he was also putting on his clothes. At that time, the complainant asked the

appellant for the whereabouts of the deceased.

2.3 As the complainant felt something fishy, she proceeded inside the field along with one Vitthalbhai Parshottambhai Patel. After walking some distance, they noticed that the deceased was lying on the ground with strangulation marks on her neck. They also noticed that the deceased was bleeding through her private portion and some injury marks were also there on her body. Therefore, the police authority of Ambaliyara Police Station were informed about the said incident and they reached the scene of offence.

2.4 After making necessary preliminary inquiry, a complaint with respect to the aforesaid incident was recorded and the same was registered as I – C. R. No. 4 of 1999. Investigation into the alleged offence was handed over to Senior Police Inspector – Mr. M. L. Patel. The Investigating Officer went to the scene of offence and performed inquest '*panchnama*' in the presence of '*panchas*'. '*Marnottar*' form was filled up and necessary arrangements

were made for sending the dead body for performing post-mortem. In the meanwhile, '*panchnama*' of the scene of offence was also done and necessary '*muddammal*' articles were collected. The '*muddamal*' articles so collected were sent to F.S.L. for examination. On receipt of the F.S.L. Report, PM note and other Reports, they were kept in the investigation file.

2.5 Further investigation was carried out and statements of several witnesses were recorded. As cogent evidence was found against the appellant, he was arrested on 03.03.1999. The clothes worn by the appellant at the time of the alleged incident in question were seized by way of a separate '*panchnama*'. Arrest '*panchnama*' was prepared and after completing necessary formalities, the appellant was sent to judicial custody.

2.6 On completion of investigation, charge-sheet was filed against the accused in the Court of learned Judicial Magistrate, First Class, Modasa. As the case was exclusively triable by the Court of Sessions, the learned Judicial

Magistrate, First Class, Modasa committed the case to the District & Sessions Court, Himmatnagar, Camp : Modasa and the same was numbered as Sessions Case No. 54 of 1999. The matter was transferred to the learned Addl. Sessions Judge for disposal on merits. On production of the accused, the learned Addl. Sessions Judge framed the charge and as he pleaded not guilty to the said charges, trial was conducted against him.

3.0 The prove the guilt against the appellant, the prosecution had examined in all seven witnesses namely, PW – 1 Dr. Harshadbhai Maganlal Sutariya at Exhibit – 7, PW – 2 Vitthalbhai Parshottambhai Patel at Exhibit – 10, PW – 3 Gitaben Jethabhai at Exhibit – 11, PW – 4 Balabhai Somabhai Parmar at Exhibit – 13, PW – 5 Dahiben Dharmabhai Patel at Exhibit – 14, PW – 6 Pratapji Chaganji Parmar at Exhibit – 16 and PW – 7 Mangalbhai Lalabhai Patel at Exhibit – 20.

3.1 The prosecution had also relied upon several documentary evidence, more particularly, the evidence in

the form of complaint at Exhibit – 12, the '*Panchnama*' of the scene of offence at Exhibit – 17, the Inquest '*panchnama*' at Exhibit – 15, the PM note at Exhibit – 9, the F.S.L. Report at Exhibit – 22, the '*panchnama*' regarding seizure of clothes worn by the appellant at the relevant point of time at Exhibit – 18 and the '*panchnama*' regarding seizure of clothes worn by the deceased at the relevant point of time at Exhibit – 19.

3.2 On submission of the closing '*purshis*', the further statement of the appellant was recorded u/s. 313 of the Code of Criminal Procedure, 1973. After hearing learned counsel for the respective parties, the learned Addl. Sessions Judge passed the impugned judgment and order convicting the appellant and imposing sentence as stated in the earlier part of this judgment. Hence, the present appeal.

4.0 Mr. J. M. Budhbhatti learned Advocate for the appellant has submitted that the Court below has committed serious error in convicting the appellant for the alleged offence in question inasmuch as there is no eye-witness to the said alleged incident and the medical

evidence on record also does establish the guilt of the appellant. He has submitted that the Court below has proceeded on mere assumptions and presumptions without properly appreciating the evidence on record. Hence, the impugned judgment and order passed by the Court below deserves to be quashed and set aside.

5.0 Ms. Mita Panchal learned Advocate for the respondent – State has submitted that from the oral evidence on record in the form of depositions of PW – 1 Dr. Harshadbhai Maganlal Sutariya at Exhibit – 7, PW – 2 Vitthalbhai Parshottambhai Patel at Exhibit – 10 and PW – 3 Gitaben Jethabhai at Exhibit – 11, it is established beyond doubt that the appellant has committed the alleged offence in question.

5.1 Learned APP has further submitted that the documentary evidence on record in the form of complaint at Exhibit – 12, '*Panchnama*' of the scene of offence at Exhibit – 17, Inquest '*panchnama*' at Exhibit – 15, PM note at Exhibit – 9, the F.S.L. Report at Exhibit – 22, '*Panchnama*' regarding

seizure of clothes worn by the appellant at the relevant point of time at Exhibit – 18 and '*Panchnama*' regarding seizure of clothes worn by the deceased at the relevant point of time at Exhibit – 19 also support the case of the prosecution and point towards the guilt of the appellant. Hence, no interference is required from this Court in this appeal.

6.0 We have heard learned counsel for the respective parties and have perused the entire oral as well as documentary evidence available on record. The prosecution has examined the complainant – Gitaben Jethabhai as PW – 3 at Exhibit – 11 who is the grand-mother of the deceased. In her deposition, she has stated that on the date of the incident in question, at around 1230 hrs., the deceased had gone to the field for attending the natural call but, as the deceased had not returned within a reasonable time, she proceeded towards the field.

6.1 This witness has further deposed that when she reached the field, she noticed that the appellant was rushing out of the field, during which time, the appellant was also

putting on his clothes. At that time, she asked the appellant as to whether he had seen her grand-daughter or not to which the appellant had replied in the negative. On account of the aforesaid conduct of the appellant, she became frightened. Therefore, she called Vitthalbhai Parshottambhai Patel [PW – 2 at Exhibit – 10], who was working in a nearby field, to accompany her to the field as the standing crop of Fennel was tall. Thereafter, both of them, i.e. PW – 3 and PW – 2 proceeded inside the field. After walking some distance, they noticed that the dead body of the deceased was lying on the ground with strangulation marks on her neck. They also noticed that there were some injury marks and that the deceased was bleeding through her private portion. Thereafter, they brought the dead body of the deceased out of the field and kept it on the boundary and informed the police authority about the said incident.

6.2 PW – 3 has identified the '*muddamal*' clothes worn by the deceased at the relevant point of time before the Court below. This witness has been cross-examined at length. However, nothing incriminating has come out from

her cross-examination which may lead us to believe her evidence to be untrue or unreliable. The aforesaid evidence led by this witness supports the complaint filed by her at Exhibit – 12 on all material points.

7.0 The prosecution has examined Vitthalbhai Parshottambhai Patel as PW – 2 at Exhibit – 10, whose reference has been made in the complaint at Exhibit – 12 as also in the deposition of the complainant before the Court below as PW – 3 at Exhibit – 11. This witness has categorically stated that on the date of the incident, at around 1230 hrs, he had gone to his field, which is situated near to the place of the incident. At that time, he saw the appellant going towards the field of one Mangalbhai Chaganbhai along with the deceased. Some time later, the complainant came to him and inquired for the whereabouts of the deceased. He informed the complainant that the appellant had taken the deceased towards the field of said Mangalbhai Chaganbhai where the crop of Fennel was grown. Thereafter, the complainant left the place. After some time, the complainant returned and requested him to

accompany her to the field as she was frightened by the tall standing crop of Fennel. Subsequently, they both proceeded towards the field.

7.1 After walking certain distance, they saw the appellant rushing out of the said field during which time the appellant was also putting on his clothes. Therefore, they proceeded towards the place from where the appellant had come. On reaching the said place, they noticed that the deceased was lying on the ground and that she was bleeding through her private portion. Thereafter, they brought the deceased near the boundary of the field.

7.2 This witness has identified the appellant before the Court below. This witness has also been cross-examined at length. However, nothing incriminating has come out from her cross-examination which may lead us to believe his evidence to be untrue or unreliable.

8.0 From the evidence led by the aforesaid two witnesses, viz. PW – 2 Vitthalbhai Parshottambhai Patel at

Exhibit – 10 and PW – 3 Gitaben Jethabhai at Exhibit – 11, it is established beyond doubt that the deceased was last seen together with the appellant. Here, the conduct of the appellant is also required to be noted. Both these witnesses have categorically deposed that when they proceeded towards the field where the tall crop of Fennel was standing, they noticed that the appellant was rushing out of the standing crop, during which time, the appellant was also putting on his clothes.

8.1 It has also come on record that when they reached the place from where the appellant had come out, they noticed that the dead body of the deceased was lying on the ground and that she was bleeding through her private portion. The aforesaid evidence clearly lead us to believe that after committing the offence in question, when the appellant realized that someone was coming towards the field, he hurriedly tried to flee the scene of offence during which time he was putting on his clothes. Thus, the role played by the appellant in the entire episode is established beyond doubt.

9.0 The prosecution has examined the Medical Officer – Dr. Harshadbhai Maganlal, as PW – 1 at Exhibit – 7, who has performed the post-mortem of the deceased. The PM note of the deceased has been produced vide Exhibit – 9. In his deposition, the Doctor has categorically opined that the injuries narrated in Column No. 17 of the PM note at Exhibit – 9 were possible by strangulation with the hands and that they were sufficient to cause death in the ordinary course of nature. He has also opined that all the injuries were ante-mortem. This witness has also been cross-examined at length. However, nothing contrary has come out from his cross-examination. Thus, the medical evidence on record in the form of PM note at Exhibit – 9 and the deposition of the Medical Officer as PW – 1 at Exhibit – 7 also support the case of the prosecution.

10.0 The prosecution has also placed reliance upon the F.S.L. Report at Exhibit – 22. From the said Report, it is evident that the human blood stains / semen found on the clothes of both the appellant and the deceased, seized by

way of '*panchnamas*' at Exhibits – 18 & 19 respectively, belonged to Blood Group 'B' which is similar to that of the deceased. The same were also found on the inner-wear of the appellant seized by way of the '*panchnama*' at Exhibit – 18. Thus, the F.S.L. Report at Exhibit – 22 also clearly establishes the guilt of the appellant and the role played by the appellant in the commission of the offence in question.

11.0 It is an undisputed fact that the deceased was a minor aged about 8½ Years when the offence in question took place. Therefore, rightly the Court below has convicted the appellant for the offence punishable u/s. 363 of the I.P.C. also. Looking to the entire evidence on record, we are of the opinion that the findings recorded by the Court below are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by the Court below. We are in complete agreement with the reasonings, findings, ultimate conclusion and the resultant order of conviction recorded by the Court below and, therefore, find no reasons to interfere with the same.

12.0 For the foregoing reasons, the Appeal is dismissed.

[R. P. DHOLAKIA, J.] [K. S. JHAVERI, J.]

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